



**DISTRICT COURT
FILED**

SEP 17 2021

**JOHN NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY**

**IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA**

TIM STUDEBAKER,)
as Personal Representative for the Estate)
of ABEL GARCIA, Deceased,)
)
Plaintiff,)
)
vs.)
)
WPX ENERGY HEADQUARTERS, LLC,)
a foreign limited liability company; DEVON)
ENERGY CORPORATION, a foreign)
for-profit business corporation; FLINTCO,)
LLC, a domestic limited liability company;)
DUN-PAR ENGINEERED FORM)
COMPANY, a foreign for-profit business)
corporation; and John Doe Employers 1-10,)
)
Defendants.)

**JURY TRIAL RESERVED
ATTORNEY LIEN CLAIMED**

Case No.: CJ-2021-1957
Judge: DAMAN CANTRELL

SECOND AMENDED PETITION FOR WRONGFUL DEATH

COMES NOW Plaintiff, Tim Studebaker, as Personal Representative for the Estate of Abel Garcia, Deceased, who alleges liability for Wrongful Death damages against Defendants, WPX Energy Headquarters, LLC, Devon Energy Corporation, Flintco, LLC, Dun-Par Engineered Form Company and John Doe Employers 1-10, based upon the following facts:

Jurisdiction and Venue

1. Plaintiff, Tim Studebaker, was appointed Special Administrator for the Estate of Abel Garcia on May 25, 2021. The decedent was married at the time of his death to Angelica Gomez Davila who resides in Guadalupe, Zacatecas [Mexico]. Of the marriage, four (4) children were born all of whom have reached the age of majority: Miguel Angel Garcia (03/**/1989), Abel Alejandro Garcia (02/**/1991), Ana Cecilia Garcia

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(04/**/1993), and Jose Antonio Garcia (06/**/1998). The decedent had three (3) additional children with a woman named “Leonorilda Garcia Medina” who reside in Tulsa, Oklahoma. The children’s names are: Xochitl Garcia, age 17, Luis Garcia, age 15, and Evelyn Garcia, age 9. This wrongful death action is brought pursuant to Oklahoma Statutes Title 12, Section 1053. At the time of his premature death, the decedent was employed at the WPX/ Devon construction site, located at 221 E. Reconciliation Way, Tulsa, Oklahoma 74103 through one or more of the following Defendants.

2. Defendant, WPX Energy Headquarters, LLC, is a Foreign Limited Liability Company with its principal place of business located in Delaware. WPX is located and doing business in the city of Tulsa, state of Oklahoma and was doing business as such at all times material hereto. WPX Energy Headquarters, LLC co-owned the premises upon which Abel Garcia was working at the time of his death. WPX was responsible at all times material hereto to maintain safety upon their premises. Upon information and belief, WPX, LLC acted individually and by and through its agents, servants and/ or employees, who acted within the course and scope of agency, service and/ or employment in furtherance of its business interests, to include its business interests at issue in this case as further described below. WPX, LLC may be served with process through its registered agent, Cogency Global, Inc., 15205 Traditions Lake Parkway, Edmond, Oklahoma 73013.

3. Defendant, Devon Energy Corporation, is a foreign for-profit company with its principal place of business located in Delaware. Devon, as the successor in interest to WPX, is located and doing business in the city of Tulsa, state of Oklahoma and was doing business as such at all times material hereto. Devon Energy Corporation co-owned the premises upon which Abel Garcia was working at the time of his death. Devon was

responsible at all times material hereto to maintain safety upon their premises. Upon information and belief, Devon acted individually and by and through its agents, servants and/ or employees, who acted within the course and scope of agency, service and/ or employment in furtherance of its business interests, to include its business interests at issue in this case as further described below. Devon may be served with process through its registered agent, The Corporation Company, 1833 S. Morgan Road, Oklahoma City, Oklahoma 73128.

4. Defendant Flintco, LLC, is a domestic limited liability company with its principal place of business in Oklahoma. Flintco, as the general contractor for the WPX/ Devon construction site, was responsible at all times material hereto to maintain safety upon their premises. Upon information and belief, Flintco acted individually and by and through its agents, servants and/ or employees, who acted within the course and scope of agency, service and/ or employment in furtherance of its business interests, to include its business interests at issue in this case as further described below. Flintco may be served with process through its registered agent, the Corporation Company, 1833 S. Morgan Road, Oklahoma City, Oklahoma 73128.

5. Defendant Dun-Par Engineered Form Company is a foreign for-profit business corporation with its principal place of business in Missouri. Dun-Par was responsible at all times material hereto to maintain safety upon the jobsite and more specifically, Dun-Par provides forms, lumber, plyform, shores, nails, and miscellaneous material and labor necessary for concrete formwork. On the WPX/ Devon project, Dun-Par built a form deck on the 11th floor out of wood boards. This form deck was within the exterior guardrail that Dun-Par also built. The form deck was not properly built and

supported. Dun-Par provided an unstable walking/working surface. Dun-Par may be served with process through its registered agent, John B. Dunn, 9608 Norfleet Road, Kansas City, Missouri 64138.

6. Defendants, John Doe Employers 1-10 will be identified as discovery in this case progresses. Upon information and belief, John Doe Employers 1-10 are Oklahoma for-profit businesses with their principal places of business in Oklahoma. John Doe Employers 1-10 are located and doing business in the city of Tulsa, state of Oklahoma and were doing business as such at all times material hereto. Upon information and belief, John Doe Employers 1-10 acted individually and by and through their agents, servants and/ or employees, who acted within the course and scope of agency, service and/ or employment in furtherance of their business interests, to include their business interests at issue in this case as further described below.

7. The events giving rise to this action all occurred within Tulsa County, Oklahoma and therefore venue is proper in this Court.

8. The amount in controversy in this case exceeds the sum or value of \$75,000, exclusive of attorneys' fees, interest and costs.

Background Facts

9. This is an action for wrongful death pursuant to Oklahoma Statutes Title 12, Section 1053, against all Defendants.

10. On or about April 16, 2021, Abel Garcia was fatally injured while working at the WPX/Devon construction site in downtown Tulsa, Oklahoma when he fell through a scaffold built and installed by Dun-Par to his death. At the time of his fall and upon

information and belief, Abel Garcia was not wearing any safety equipment or the appropriate harness.

11. At the time his fatal injuries occurred, Abel Garcia was employed by and through one or more of these Defendants, who had a contract to construct a new office building in downtown Tulsa, Oklahoma. Moreover, WPX/ Devon and Flintco, LLC entered into a *separate* contract with the United States Department of Labor Occupational Safety & Health Administration (“OSHA”) before the construction project began. The contract at issue is entitled a “Partnership Agreement”. The purpose of the contract was to govern and control all aspects of worker safety at the WPX/ Devon construction site. The Plaintiff alleges that decedent, Abel Garcia, was a third-party beneficiary to this contract between OSHA, WPX/ Devon and Flintco, LLC and further, that Defendant’s material breach of its contract with OSHA resulted in harm to Abel Garcia.

12. Defendants failed to provide an adequate and reasonably safe environment for Abel Garcia while he was working approximately 70-feet above ground at the WPX/ Devon building site in Tulsa, Oklahoma.

13. Defendants’ actions were not only grossly negligent, but willful, wanton and intentional.

14. Defendants’ conduct resulted in the death of Abel Garcia and damage to Plaintiff as set forth herein.

15. Plaintiff alleges herein and will prove at trial that Defendants’ acts and omissions as above described amounted to at a minimum, gross negligence, because Defendants acted with the knowledge that serious injury or death to Abel Garcia was substantially certain to result from Defendants’ lack of basic safety standards at the WPX/

Devon job site. In the alternative, Plaintiff claims that Defendants WPX's/ Devon's and Flintco's breach of the Partnership Agreement with OSHA, a contract to which Abel Garcia was a third-party beneficiary, was likewise a direct cause of Abel Garcia's untimely death and damages.

Damages

16. As a result of Defendants' conduct, Abel Garcia died on April 16, 2021.

17. At the time of his death, Abel Garcia was 52 years old with a life-expectancy of 26.5 years.

18. Timothy Studebaker was appointed the Administrator of the Estate of Abel Garcia on May 25, 2021. Pursuant to 12 O.S. § 1053, Mr. Studebaker is the proper party to maintain this action.

19. As a result of Defendants' acts and omissions, Abel Garcia was fatally injured. Prior to his death, Abel Garcia experienced conscious pain and suffering and the Estate of Abel Garcia incurred medical and funeral expenses and suffered other economic loss, including the loss of future earnings, and has been damaged in an amount in excess of \$75,000.00.

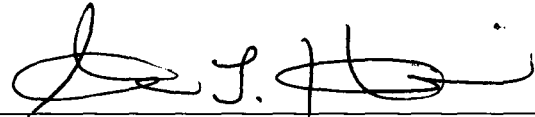
20. In the alternative and as a result of Defendants, WPX's and Devon's material breach of the terms and conditions of the Partnership Agreement with OSHA, Abel Garcia was fatally injured. Prior to his death, Abel Garcia experienced conscious pain and suffering and the Estate of Abel Garcia incurred medical and funeral expenses and suffered other economic loss, including the loss of future earnings, and has been damaged in an amount in excess of \$75,000.00.

21. As a result of Abel Garcia's death, his children listed above suffered grief and the loss of parental consortium and have been damaged in an amount in excess of \$75,000.00.

22. Plaintiff further states that Defendants' conduct was reckless, done intentionally and with malice towards others and that punitive damages should be assessed against Defendants, and in favor of Plaintiff, in an amount in excess of \$75,000.00.

WHEREFORE Plaintiff prays for judgment against Defendants each in an amount in excess of \$75,000.00, exclusive of costs and attorney's fees; for punitive damages in an amount in excess of \$75,000.00; and for all other relief this Court deems just and proper.

Respectfully submitted,



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